

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

copy (8)

JOHN RICHARD JAE

Plaintiff

vs.

KENNETH D. KYLER et al.

Defendants.

CIVIL No. 00-00-00

U.S. District Judge R.  
Magistrate Judge Smyke

FILED  
HARRISBURG

MAR 12 2001

MARY E. D'ANDREA, CLERK  
Per. CJS  
DEPUTY CLERK

MOTION TO COMPEL PRODUCTION OF DOCUMENTS  
AND ANSWERS TO PLAINTIFF'S SECOND SET  
OF INTERROGATORIES

The Plaintiff John Richard Jae moves the court pursuant to Rules 31(b) and 37(a), Fed. R. Civ. P., for an order compelling the Defendants to produce for inspection and copying the documents requested on January 8, 2001, and to answer the second set of interrogatories on the same date, herein this above entitled civil.

This motion is based upon the accompanying Affidavit and Brief in Support, and upon the papers and files herein this case.

(s) John Richard Jae

MR. JOHN RICHARD JAE

#BQ-3219

Sci-Greene/PMU

Dated 8th MARCH 2001:

175 Progress Drive

Waynesburg, PA 15370

Plaintiff and Case Counsel

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAG

CIVIL No. JEC-0001

Plaintiff

vs.

U.S. District Judge K  
Magistrate Judge Smy

KENNETH D. KYLER et al.

FILED  
HARRISBURG

MAR 12 2001

Defendants.

MARY E. D'ANDREA, CLERK  
Per 9/8  
DEPUTY CLERK

AFFIDAVIT IN SUPPORT OF MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS AND  
~~ANSWERS TO PLAINTIFF'S SECOND SET OF INTERROGATORIES~~  
Plaintiff John Richard Jagover & Sons Inc.  
penalty of perjury pursuant to 28 U.S.C. 1746, that

1. I am the Plaintiff and Counsel in the  
above-entitled Civil Action - I make this Affidavit  
in Support of Motion to Compel Production of Documents in  
this case.

2. On or about January 9, 2001, I served Defendant's  
Counsel of Record with the Originals of Plaintiff's  
Second Set of Interrogatories and Plaintiff's  
Third Request for Production of Documents herein.

3. On or about February 13, 2001, Defendants, through  
their Defendants' objections to Plaintiff's  
Set of Interrogatories and Defendants' objections to Plaintiff's

### Third Request For Production Of Documents, herein

4. That, all of Plaintiff's Second Set of Interrogatories and all of his Third Request For Production Of Documents are relevant to the facts & claims at issue, herein this case, as set forth in the accompanying Brief In Support.

5. That, Defendants' Answers To Plaintiff's Second Set of Interrogatories and their production of the Documents as is requested therein Plaintiff's Third Request For Production Of Documents is necessary to enable the Plaintiff to adequately respond to and defend against Defendants' Motion For Summary Judgment, herein this case.

6. Defendants' objections, herein, are waived as a result and a consequence of their failure to make them in a timely manner, as is set forth in the accompanying Brief In Support.

7. Defendants' objections, herein, are waived as a result and a consequence of their failure to ~~file any brief in support~~ <sup>file any brief in support</sup> of their Defendants' objections to Plaintiff's Second Set of Interrogatories and their failure to file any brief in support of their Defendants' objections to Plaintiff's Third Request For Production Of Documents, herein this case as set forth in the accompanying Brief In Support.

(W) HEREOF, PLAINTIFF John Richard Doe, Requests that this Court grant this Motion to Compel in all respects and order the Defendants to Answer Plaintiff's Second Set of Interrogatories and produce all of the documents requested in Plaintiff's Third Request for Production of Documents in their individual entirety, herein this case:

RESPECTFULLY SUBMITTED

(S) John Richard Doe

MR. JOHN RICHARD DOE

#BQ-3214

SCI-Greene/SMU

175 Progress Drive

Waynesburg, PA 15370-8080

Dated/Executed on:

26th MARCH 2001

At: Waynesburg, Pennsylvania



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,

Civil No. ECK-00-0

Plaintiff,

vs.

U.S. District Judge  
Magistrate Judge Smyse

KENNETH D. KYLER, et al.,

Defendants.

FILED  
HARRISBURG

MAR 12 2001

MARY E. D'ANDREA, CLERK  
Per AK  
DEPUTY CLERK

BRIEF IN SUPPORT OF MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS AND ANSWERS  
TO PLAINTIFF'S DISCOVERY INTERROGATORIES  
~~STATEMENT OF THE CASE~~

THIS IS A 42 U.S.C. § 1983 CIVIL RIGHTS ACTION  
filed by a prisoner at the State Correctional Institution  
at Camp Hill, Camp Hill, PA, seeking compensatory and  
punitive damages, a declaratory judgment, Plaintiff's  
costs of this suit, Plaintiff's Attorney's fees & costs  
(if any) and a trial by jury, based upon Defendants' denial  
of legal materials, religious materials, showers,  
outside yard/exercise, oppressive heat/poor ventilation  
failure to follow mandatory prison policy directives  
and retaliation for exercise of rights to free  
of speech.

On October 24, 2000, the Plaintiff was transferred from  
the SCI-Camp Hill RHU to the SCI-Greene, SNV, where he is presently  
confined at date

## II. STATEMENT OF THE FACTS

On JANUARY 8, 2001, Plaintiff mailed his Second Set of Interrogatories and his Third Request For Production of Documents to Counsel for the Defendants, herein, this case, pursuant to Fed. R. P. 33 & 34(b).

As set forth in the Plaintiff's Affidavit In Support of Motion To Compel Production of Documents, here the Defendants failed to respond to this Plaintiff's Discovery Requests, as set forth above, within thirty (30) days of their receipt thereof the same as required by Federal law, Fed. R. Civ. P. 33(b) & 34(b).

Also, as set forth in the Plaintiff's Affidavit In Support of Motion To Compel Production of Documents herein, the Defendants have not, as of the date of this here Motion, filed any Brief In Support of Defendants' objections to Plaintiff's Second Set of Interrogatories, nor have they filed any Brief In Support of Defendants' objections to Plaintiff's Request For Production of Documents, within ten (10) days after the filing of said objections, as required by M. P. LR 2.5 of this Court, herein this case.

2/ Plaintiff mailed his Second Set of Interrogatories and his Request For Production of Documents on January 8, 2001, and gave three (3) days for mailing defendants' objections were due on January 11, 2001, but were not actually filed until February 13, 2001.  
3/ The here Defendants' Briefs were due to be filed herein by no later than February 26, 2001.

### III. ARGUMENTS PLAINT

A. DEFENDANTS HAVE WAIVED THEIR OBJECTIONS TO ANY OF PLAINTIFF'S DISCOVERY REQUESTS BY THEIR FAILURE TO RESPOND TIMELY TO SUCH REQUESTS WITHIN THIRTY (30) DAYS THEREAFTER SERVICE THEREOF THE SAME.

The Federal Rules of Civil Procedure provide that responses and objections to Interrogatories shall be served within thirty days after service.<sup>4/</sup> Rules likewise provide the same exact time from service of responses and objections to Requests for Production of Documents.<sup>5/</sup> The Defendants, herein, have not responded to this Plaintiff's Second Set of Interrogatories nor Plaintiff's Third Request for Production of Documents, herein this case, nor did they file an Objections to either or both of such Plaintiff's Requests within thirty (30) days thereafter service of both of such, herein, either. Defendants' objections to Plaintiff's Second Set of Interrogatories ~~and~~ and the Objections to Plaintiff's Third Request for Production of Documents were not served upon this Plaintiff, herein, until February 13, 2001, thirty-one (31) days after service thereof, and the rule says 30, not 31 days. In fact, and did not even prepare Defendants' objections to Plaintiff's Second Set of Interrogatories nor Defendants' Objections to Plaintiff's

<sup>4/</sup> See Fed. R. Civ. P. 33(b)(3).

<sup>5/</sup> See Fed. R. Civ. P. 34(b).



Third Request For Production of Documents until the 31st day and therefore, Defendants' objection to both Plaintiffs' discovery requests, herein, is especially untimely. 6/

Plaintiff furthermore avers & submits that it is well-established in federal practice that "discovery objections are waived if a party fails to object timely to interrogatories, production requests, or other discovery efforts." Gadsey v. United States, 133 F.R.D. 111, 113 (S.D. Mass. 1990), accord, Dan v. Yamaha Motor Corp., 125 F.R.D. 20, 22 (D. Mass. 1990) and cases cited, Krawson v. City of Quincy, 50 F.R.D. 7 (D. Mass. 1988), Cephas v. Bosch, 47 F.R.D. 37, 38 (E.D. Pa. 1969), Sturdevant v. Sears, Roebuck & Co., 30 F.R.D. 425 (W.D. Mo. 1963), and Ferricelli v. Borough of Morristown, 136 F.R.D. 396 (E.D. Pa. 1991).

This waiver is enforced even if the objections are based on a claim of privilege. Mann v. Kelly, Hart & Holman, P.C., 929 F.2d 812 (1st Cir. 1991), aff'd, 10 F.R.D. 303, 309 (D. Kan. 1986) and cases cited, Cardox Corp. v. Olin Mathieson Chemical Corp., 23 F.R.D. 5 (S.D. Ill. 1958). The noncomplying party is excused from them only if the discovery sought is "patently improper." Gadsey v. United States, 133 F.R.D. at 113, or if it "far exceeds the bounds." 6/ Throughout this case, Defendants' Counsel has repeatedly ignored, violated & disrespected the time limits of the Federal Rules of Civil Procedure, Local Rules of this Court and/or the Court's



fair discovery. Keweenaw v. City of Quincy, 120 F.R.D. 7. Plaintiff's discovery requests at issue herein, "not" "potentially improper" discovery such that they exceed the bounds of fair discovery, and thus, <sup>the</sup> Defendants should not be excused from the waiver, herein this case.

B. DEFENDANTS HAVE WAIVED THEIR OBJECTIONS TO ANY OF PLAINTIFF'S DISCOVERY REQUESTS BY THEIR FAILURE TO FILE ANY BRIEFS IN SUPPORT OF THEIR OBJECTIONS WITHIN TEN (10) DAYS.

On or About February 13, 2001, the Defendant, the Council, filed their objections to Plaintiff's Second Set of Interrogatories and their objections to Plaintiff's Third Request for Production of Documents herein this case, and therefore, as required by MDLR 7.5, was due to be filed & served by no later than ~~February~~ February 27, 2001, however, Defendants have filed any Briefs in support of their objections, in this case, as of the date of this Motion to Compel.

MDLR 7.5 of this court, in its relevant part, states: Within ten (10) days after the filing of any motion filed prior to trial, the party filing the same shall comply with order, by filing motions, Briefs, objections by ~~not~~ not providing this with discovery documents, as ordered by the court for over two months and the time has come this court to enter a summary judgment. 5

File an original and two copies of a brief with the clerk and shall serve copies thereof on all parties. . . . Unless otherwise ordered by the court, if supporting legal briefs are not filed within the time provided in this rule such motion shall be deemed to be withdrawn. 7/

Thus, Defendants' objections to Plaintiff's discovery requests should be deemed withdrawn and Defendants should be compelled to answer Plaintiff's Second Set of Interrogatories in full and compelled to produce all of the documents requested by Plaintiff Third Request For Production of Documents, herein this instant civil rights action.

POINT II  
PLAINTIFF'S SECOND SET OF  
INTERROGATORIES AND PLAINTIFF'S  
THIRD REQUEST FOR DOCUMENTS,  
HEREIN, ARE "NOT" UNTIMELY.

If the Defendants, in both their Defendants' objections to Plaintiff's Second Set of Interrogatories and to objections to Plaintiff's Third Request For Production 7/ Given what this Plaintiff states & sets forth herein, supra, this court should not order otherwise.

Documents, herein this case, claim that because Plaintiff's Second Set of Interrogatories and Plaintiff's Third Request for Production of Documents were "not" served on a date so that discovery could be completed by January 17, 2001, months after the supplemental complaint, are not timely.

However, contrary to the Defendants claim, Plaintiff avers & submits, that, in addition to the Defendants claim here being waived, as untimely brought/filed, the Defendants are in error, as on October 30, 2000, Defendants thru counsel, filed the objections to Plaintiff's Second Request for Production of Document, herein this case.

On November 12, 2000, Plaintiff filed his Brief Opposition to Defendants' objections to Plaintiff's Second Request for Production of Documents herein this case.

On December 4, 2000, Defendants thru counsel, filed their Memorandum in Opposition to Plaintiff's Motion to Compel, herein this case.

On December 18, 2000, Plaintiff filed his Reply Brief to Defendants' Memorandum in Opposition to Plaintiff's Motion to Compel, herein this case.





last pleading filed by that party.

Plaintiff avers & submits that there is nothing in M.D. LR 7.5 of this court nor in Fed. R. Civ. P. which requires this Plaintiff to have served his Plaintiff's Second Set of Interrogatories and his Plaintiff's Third Request For Production of Documents upon counsel for the Defendants, herein this on a date so that discovery could be completed January 17, 2001, the discovery deadline, herein this case. In fact, M.D. LR 26.4, in its relevant part, specifically states, that, "---- each party in a civil action shall complete all discovery proceedings within six (6) months of the date of the last pleading filed by that party." The last pleading filed by this Plaintiff, herein, was his Supplemental Complaint, filed on July 17, 2000, and thus since he served his Plaintiff's Second Set of Interrogatories and his Plaintiff's Third Request For Production of Documents upon counsel for the Defendants on January 8, 2001, he "has" completed all discovery proceedings within six (6) months of the date of the last pleading filed by this party and furthermore, was then upon Defendants to file their responses to Plaintiff's ~~Second Set of Interrogatories~~ and Plaintiff's Third Request

Production of Documents, herein, within six (6) months of the date last pleading filed by that party, which was Answer to Plaintiff's Supplemental Complaint, filed, herein

August 28, 2000, which would make Defendant's discovery deadline set for February 28, 2001, and Plaintiff's Second Set of Interrogatories and Third Request for Production of Documents was made to counsel for the Defendants, herein, on January 8, 2001, and Defendants' Answers to both of such were due on February 12, 2001, ample time to have served such on this Plaintiff before February 28, 2001, and thus Defendants' Claims here have no legal merit at all & are contrary.

Finally, Plaintiff avers & submits, that, he needs the Defendants' Answers to his Second Set of Interrogatories and it is necessary for Defendants to produce all of the documents which requests therein his Plaintiff's Third Request for Production of Documents, herein, in order to enable him to adequately & sufficiently respond to and defend against the Defendants' Motion for Summary Judgment, herein, and that without such he "will be denied his rights to due process of the law and to access to the courts, as such denial will cause him to be unable to properly, adequately & sufficiently defend against such defense motion, and he has a right to Interrogatory Answers and documents which enable him to do so and in as far as M.D. LR 8.6 can be used / construed to limit or deny him such, such Local Rule of Court would & does violate Fed. R. Civ. P. 56.

(f) and deny this Plaintiff his rights to  
 access to the courts & the process of the law under the 1st & 14th  
 Amendments of the United States Constitution  
 and such Local Rule of Court would be ~~it is~~ unconstitutional  
 & this Plaintiff does challenge the constitutionality  
 of such and lastly a Local Rule of one Court  
 cannot be construed or used to deny or  
 circumvent the Federal Rules of Court Procedure  
 for all the courts nor what is allowed thereunder  
 for, it is the Federal Rules of Court Procedure  
 not the Local Rules of this Court, which control  
 and govern this matter, herein this case and  
 thus, Plaintiff's motion to compel, must be granted  
 in full, by this Court.

RESPECTFULLY SUBMITTED

(s) John Richard Jae  
 MR. JOHN RICHARD JAE,  
 #BQ-3219  
 SOI-Greene/SMU  
 175 Progress Drive  
 Waynesburg, PA. 15370-8089

Dated = 8th MARCH 2001 =

Joe vs. Kyle et al.

CIVIL No. 12 CV 00315

CERTIFICATE OF SERVICE

I Certify that on 3/09/01, I mailed to the persons listed a true & correct copy of each of the Plaintiff's Motion To Compel Production Of Documents, Affidavit In Support Of Motion To Compel Production Of Documents and Brief In Support Of Motion To Compel Production Of Documents. U.S. 1st Class Mail, Postage pre-paid & addressed to

MR. Michael L. Harvey, SDAG  
Office of the Attorney General of Pennsylvania  
15th Floor, Strawberry Square  
Harrisburg, PA 17120

"I Declare under penalty of perjury & pursuant to 28 U.S.C. 1746 that the above is true & correct."

Dated/Executed on:

(s) John Richard J.  
MR. JOHN RICHARD J.  
Plaintiff and Rise Coun

9th MARCH 2001:

At: Waynesburg, Pennsylvania: